

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands)	WT Docket No. 03-66 RM-10586
)	
Part 1 of the Commission's Rules - Further Competitive Bidding Procedures)	WT Docket No. 03-67
)	
Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service to Engage in Fixed Two-Way Transmissions)	MM Docket No. 97-217
)	
Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico)	WT Docket No. 02-68 RM-9718
)	
Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets)	WT Docket No. 00-230
)	

**The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance,
Inc.**

Consolidated Opposition to Petitions for Reconsideration and Clarification

Pursuant to Section 1.429(f) of the Commission's rules, The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc. ("IMWED") hereby submits this Consolidated Opposition to Petitions for Reconsideration

and Clarification in connection with the Commission’s Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order (“2006 Order”).¹

About IMWED

IMWED was formed in 2003 (when EBS was still known as ITFS). It is composed of six organizations that are licensed to operate EBS systems scores of communities nationwide, ranging in size from Chicago to Kona, Hawaii.² It is a non-profit organization intended to provide member licensees with technical and business assistance needed to convert their systems successfully to digital two-way mobile operation.

Specifically, IMWED’s corporate purposes are: 1) to assist ITFS and other 2.5 GHz licensees in spectrum planning and technical coordination, including, without limitation, providing technical assistance and information to ITFS licensees; 2) to facilitate the successful conversion of ITFS and other 2.5 GHz band spectrum to two-way mobile digital use in a manner that fosters the long-term viability and independence of ITFS licensees; 3) to encourage the development of new technology that enables new and

¹ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order (“2006 Order”).

² The members of IMWED are: Chicago Instructional Technology Foundation (“CITF”), Denver Area Educational Telecommunications Consortium (“DAETC”), Instructional Telecommunications Foundation (“ITF”), North American Catholic Educational Programming Foundation (“NACEPF”), Portland Regional Educational Telecommunications Corporation (“PRETC”), and Twin Cities Schools’ Telecommunications Group (“TCSTG”).

expanded educational uses of 2.5 GHz spectrum; and 4) to facilitate and encourage the entry of new competitors and new technology into the wireless broadband industry in the 2.5 GHz band.

IMWED's members have experience in secondary market transactions involving excess EBS capacity for both video and data uses. They have been parties to excess capacity agreements with subsidiaries of a variety of well-known firms, including Sprint, BellSouth, WorldCom, Nucentrix, and Clearwire.

I. IMWED opposes NextWave's ill-considered proposals concerning the auction of EBS "white space."

IMWED opposes NextWave's proposal that EBS white space be auctioned immediately, and, in particular, its recommendation that all EBS white space within a BTA be sold to a single entity.³

As it considers this subject, the Commission should take into account that EBS spectrum in major urban areas is heavily utilized, with channel groups only rarely vacant. Consequently, EBS white space usually occurs in rural areas or the fringes of urbanized areas. Commonly, urban white space takes the form of an irregularly-shaped donut of unallocated territory around a "hole" that consists of one or more incumbent GSAs covering the heart of the metropolitan area. Typically urban EBS white space could complement existing service, but such ring-like areas rarely will be a basis for new service as they do not serve the bulk of the population.

³ NextWave Petition for Partial Reconsideration ("NextWave Petition"), pp. 9-11.

Further, under the Commission's Rules, only non-profit educational entities are eligible to hold EBS licenses (with relatively unusual grandfathered exceptions dating from the wireless cable era).⁴ Though excess capacity leasing is permitted, and has long been important to the EBS service, EBS is not commercial spectrum and its fundamental purpose remains education.

NextWave urges that the Commission sever the link between the timing of bandplan transitions and that of EBS auctions.⁵ Yet the entire purpose of transitions is to facilitate the rollout of broadband wireless service and NextWave gives us no reason to believe that the initiation of widespread service could in any event proceed the completion of transitions, regardless of when EBS white space is allocated.

Given this background, IMWED disagrees with NextWave that immediate auctioning of EBS spectrum will speed broadband deployments significantly---the chief argument NextWave adduces in support of speedy EBS auctions.⁶ Further, as an entity composed of EBS educators, IMWED sees no purpose to a single EBS licensee's holding white space on all 20 EBS channels in a given BTA. Typically, an EBS licensee holds a single channel group locally. We consider it erroneous to expect EBS entities to deliver four channels of service to a GSA in a dense downtown area, and twenty channels of service in the sparsely-populated environs; instead, by far the most

⁴ See section 27.1201.

⁵ NextWave Petition, p. 5.

⁶ *Id.*, pp. 3-5.

common pattern will entail a licensee's purchasing white space immediately surrounding its current service area in order to expand its territory *on its currently-utilized channels*. It will serve the Commission's goals far better---and, very likely, result in higher auction proceeds---to sell EBS white space in the manner that conforms to the method that EBS licensees will really employ.

Because EBS is a unique service, auctions of EBS spectrum will require unique rules and policies. To give one example, designated entity status takes on an entirely new context with respect to EBS. We doubt that it would make sense to provide bidding credits to a low-budget Montessori school and deny them to a major university in the same town. As well, there are important public policy issues involving probable competition between EBS licensees seeking to purchase spectrum with the financial backing of commercial operators and those seeking spectrum for entirely educational uses.

IMWED believes that the Commission should place a premium on implementing EBS auctions thoughtfully---an objective that is inconsistent with the haste that NextWave urges. We do not oppose the prompt opening of a rulemaking concerning EBS auction procedures and the consideration of timing as one of the issues, however. And we agree with NextWave that EBS spectrum should be auctioned on a BTA-by-BTA basis.⁷

⁷ *Id.*, pp. 9-10.

II. IMWED supports certain reconsideration and clarification sought by EBS licensees Hispanic Information and Telecommunications Network (“HITN”) and the Clarendon Foundation (“Clarendon”).

In its petition for reconsideration, HITN correctly criticizes the Commission’s approach to GSAs in those instances when an incumbent licensee once had a protected service area overlap with a proposed (but never granted) EBS facility. We agree that HITN that it makes no sense for a licensee’s GSA to be reduced in size because of a rejected proposal.⁸

HITN also correctly points out that certain commercial entities have taken captious positions concerning the length of legacy leases from the wireless cable era that have the effect of forestalling broadband service; IMWED supports HITN’s request that the Commission close the loophole that permits this sort of obstruction.⁹

Finally, we agree with Clarendon’s position that grandfathered leases subject to a 15-year term limit should not be transformed into leases of unlimited duration because there was a subsequent (fairly brief) interregnum during which the Commission imposed no limit on the length of EBS leases.¹⁰

Respectfully submitted,

THE ITFS/2.5 GHz MOBILE WIRELESS
ENGINEERING & DEVELOPMENT
ALLIANCE, INC.

⁸ HITN Petition for Further Reconsideration and Request for Clarification (“HITN Petition”), pp. 7-9.

⁹ *Id.*, pp. 6-7.

¹⁰ Clarendon Petition for Limited Clarification of EBS Term Limits, pp. 5-7.

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Dated: August 17, 2006

Certificate of Service

I, John Schwartz, hereby certify that copies of the foregoing Consolidated Opposition to Petitions for Reconsideration and Clarification have been served by first class mail this 17th day of August, 2006 on the following:

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